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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,942	04/12/2001	Lawrence J. Mann	56319USA3A	3232
32692	7590	10/29/2003		
3M INNOVATIVE PROPERTIES COMPANY			EXAMINER	
PO BOX 33427			SALVATORE, LYNDA	
ST. PAUL, MN 55133-3427				
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 10/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/833,942	<b>Applicant(s)</b> MANN ET AL.
	<b>Examiner</b> Lynda M Salvatore	<b>Art Unit</b> 1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 August 2003.
  - 2a) This action is FINAL.      2b) This action is non-final.
  - 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- Disposition of Claims**
- 4) Claim(s) 1-23,26,28-33,35, and 37- 48 is/are pending in the application.
  - 4a) Of the above claim(s) 1-22 and 38-47 is/are withdrawn from consideration.
  - 5) Claim(s) \_\_\_\_\_ is/are allowed.
  - 6) Claim(s) 23-26,28-33,35-37 and 48 is/are rejected.
  - 7) Claim(s) \_\_\_\_\_ is/are objected to.
  - 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment and accompanying remarks dated 08/26/03 have been entered. Claims 23,25,30 and 31 have been amended, claim 48 has been added, and non-elected claims 1-22 and 38-47 have been canceled as requested. With regard to claims 23-26, 28-33, and 35-37 finally rejected under 35 U.S.C. 103(a) as obvious over Beardsley et al., US 5,849,051, in view of DeFilippi, US 5,580,770 and further in view of Recker et al., US 5,627,222 as set forth in section 5 of the last Office Action, the Examiner is hereby withdrawing the finality of this rejection in view of Applicant's arguments made during an interview on August 14<sup>th</sup>, 2003. Applicant's amendments to claims 23,25,30 and 31 and request for reconsideration of claims 23-26, 28-33, and 35-37 have been fully considered and are persuasive to overcome the prior art of record, however, upon further consideration, a new ground(s) of rejection is set forth herein below.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 23-26,28,29,31-33, 35 and 36 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tintelnot, US 2001/0041529

A1.

Applicant amended claims 23,25,30 and 31 to include the limitation of “rubber” particle. The published patent application to Tintelnot teaches a flexible open pored cleaning body having at least one scrubbing surface (Section 001). Tintelnot teaches various suitable cleaning body forming materials such as open pored polyurethane flexible foam (Section 0010 and 0011). Tintelnot further teaches coating the scrubbing surface with a two component polyurethane composition which may optionally comprise embedded rubber granulate particles (Section 0017). Preferably the polyurethane coating is applied to or pressed into the scrubbing surface of the foam substrate in the liquid state, and then hardened (Section 0017). With regard to the binder limitations present in claim 23, it is the position of the Examiner that the two component polyurethane composition meets this limitation.

Although, Tintelnot does not explicitly teach the Shore A hardness range or of the rubber particles as well as the glass transition temperature range of the binder, as set forth in claims 23,25,28-31, 35-37, and 48 it is reasonable to presume that said properties are inherent to the invention of Tintelnot. Support for said presumption is found in the use of like materials such as rubber particles and binder (i.e., two-component polyurethane composition), to provide a cleaning article comprising a foam substrate and rubber particles. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594

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In addition, the presently claimed Shore A hardness range or aspect ratio of the rubber particles as well as the glass transition temperature range of the binder would obviously have been present once the Tintelnot product is provided. *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 30,37, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tintelnot, US 2001/0041529 A1.

With regard to the limitation of an aspect ratio range of 1:1 to about 2:1 and particle diameter or length in range of about .05mm to 4mm as set forth in the above aforementioned claims, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the aspect ratio and particle size to provide the desired cleaning and scrubbing properties. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 2,743,599  
WO 95/22424  
FR 2250049

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

October 21, 2003  
ls



TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700